



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2011-0372; FRL-9741-8]

**Determination of Attainment of the 1-Hour Ozone National Ambient Air Quality Standards in the Sacramento Metro Nonattainment Area in California**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is determining that the Sacramento Metro 1-hour ozone nonattainment area (Sacramento Metro Area) has attained the revoked National Ambient Air Quality Standard (1-hour ozone NAAQS or standard), and to exclude certain 2008 data caused by wildfire exceptional events. These air quality determinations were proposed in conjunction with a proposed determination to terminate the State of California's obligations regarding 1-hour ozone section 185 fee program SIP provisions for the Sacramento Metro Area. In this notice, EPA is finalizing only that portion of its notice of proposed rulemaking that determines that the Sacramento Metro Area has attained the 1-hour ozone standard, and that excludes certain exceedances as caused by ozone exceptional events. These air quality determinations were addressed separately in the proposed rulemaking and are severable from the other issues that relate to termination of

section 185 1-hour ozone requirements. EPA is not at this time taking final action on other aspects of our notice of proposed rulemaking that address termination of 1-hour ozone section 185 fee requirements. EPA intends to address any other issues relating to Sacramento Metro Area 1-hour ozone section 185 requirements, and their termination, in a separate future rulemaking.

**DATES:** This rule will be effective on [Insert date 30 days from the date of publication in the Federal Register].

**ADDRESSES:** EPA has established docket number EPA-R09-OAR-2011-0372 for this action. Generally, documents in the docket for this action are available electronically at <http://www.regulations.gov> or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at <http://www.regulations.gov>, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** John J. Kelly, EPA Region IX, (415) 947-4151, [kelly.johnj@epa.gov](mailto:kelly.johnj@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us"

and "our" refer to EPA.

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### **I. EPA's Proposed Action**

On May 18, 2011 (76 FR 28696), EPA proposed to determine that the Sacramento Metro Area attained the 1-hour ozone standard in 2009 based on complete, quality-assured and certified ambient air quality monitoring data for the 2007-2009 monitoring period, excluding exceedances of the 1-hour ozone standard that occurred due to wildfire exceptional events in 2008.<sup>1</sup> In making its proposed determination, EPA proposed to exclude from use certain air quality monitoring data for 2008, because they meet the criteria for ozone exceptional events that are caused by wildfires. These air quality determinations were addressed separately in the proposal and are severable from the other issues and criteria in the May 18, 2011 notice of proposed rulemaking that relate to termination of section 185 1-hour ozone requirements.

EPA further proposed to determine that the State of California is no longer required to submit or implement section

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<sup>1</sup> EPA proposed that the area continued in attainment based on complete, quality-assured data for 2010.

185 fee program State Implementation Plan (SIP) provisions for the Sacramento Metro Area to satisfy anti-backsliding requirements for the revoked 1-hour ozone national ambient air quality standard (1-hour ozone NAAQS or standard).<sup>2</sup> EPA's proposal to terminate the section 185 fee requirements for the area identified certain criteria -- (1) whether the area attained and (2) that any such attainment was due to permanent and enforceable emissions reductions -- on which to base termination, and addressed each of these separately. With respect to the criterion of attainment of the 1-hour standard, in a section titled, "1-Hour Ozone Attainment" EPA stated:

EPA proposes to determine that the Sacramento Metro Area has attained the 1-hour ozone standard; that is, the number of expected exceedances at any site in the nonattainment area is not greater than one per year. [internal citation deleted] This proposed determination is based on three years of complete, quality-assured and certified ambient air quality monitoring data in AQS showing attainment of the 1-hour ozone standard for the 2007-2009 monitoring period, and complete, quality-assured data in AQS for 2008-2010 that show continued attainment. As explained below, in determining the area's attainment of the 1-hour ozone standard, EPA is also proposing to exclude from consideration exceedances that occurred on three days in 2008, because they are due to wildfire exceptional events.

May 18, 2011, 76 FR 28700.

The May 18, 2011 proposal presented monitoring data for the

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<sup>2</sup> On the same day that EPA's proposal was published in the Federal Register, EPA published a separate interim final determination "to defer CAA section 179 sanctions associated with the Sacramento Metro Area's 1-hour Ozone CAA section 185 obligation based on our concurrent proposal to approve a CAA section 185 termination determination which would remove the obligation of the state to submit a section 185 SIP when finalized." May 18, 2011, 76 FR 28661.

Sacramento Metro Area for 2007-2009, along with EPA's explication that showed the area attained the 1-hour ozone NAAQS, and continued to attain through 2010. Table 1 shows that the Sacramento Metro Area has continued to attain the 1-hour ozone NAAQS since that time, based on complete, quality-assured and certified data for 2008-2010, 2009-2011 and preliminary data available for 2010-2012.<sup>3</sup>

Table 1 - 1-Hour Ozone Data for the Sacramento Metro 1-Hour Ozone Nonattainment Area <sup>a</sup>						
Site (Monitor ID)	Expected Exceedances by Year				Expected Exceedances 3-yr average	
	2008 <sup>b</sup>	2009	2010	2011	2008-2010	2009-2011
Placerville (06-017-0010)	2.0	0.0	0.0	0.0	0.7	0.0
Echo Summit (06-017-0012)	0.0	0.0	0.0	0.0	0.0	0.0
Cool (06-017-0020)	2.0	0.0	0.0	0.0	0.7	0.0
Auburn (06-061-0002)	0.0	0.0	0.0	0.0	0.0	0.0
Colfax (06-061-0004)	0.0	0.0	0.0	0.0	0.0	0.0
Roseville (06-061-0006)	2.0	0.0	0.0	0.0	0.7	0.0
North Highlands (06-067-0002)	0.0	0.0	0.0	0.0	0.0	0.0
Sacramento-Del Paso Manor (06-067-0006)	0.0	0.0	0.0	0.0	0.0	0.0
Sacramento-T Street (06-067-0010)	0.0	0.0	0.0	0.0	0.0	0.0
Elk Grove (06-067-0011)	0.0	0.0	0.0	0.0	0.0	0.0
Folsom (06-067-	2.0 <sup>b</sup>	0.0	0.0	0.0	0.7	0.0

<sup>3</sup> Preliminary data on the California Air Resources Board (CARB) website show a single exceedance (0.128 ppm) of the 1-hour ozone NAAQS on August 13, 2012 at the Sloughhouse Road monitoring site. Since there were no exceedances at this site in 2010 or 2011, this one exceedances in 2012 would not by itself constitute a violation of the 1-hour ozone NAAQS for the period 2010-2012.

0012)						
Sacramento-Airport Road <sup>c</sup> (06-067-0013)	0.0	NA	NA	NA	NA	NA
Sacramento-Goldenland Court (06-067-0014)	0.0	0.0	0.0	0.0	0.0	0.0
Sloughhouse Rd. (06-067-5003)	3.0	0.0	0.0	0.0	1.0	0.0
Vacaville (06-095-3003)	0.0	0.0	0.0	0.0	0.0	0.0
Davis (06-113-0004)	0.0	0.0	0.0	0.0	0.0	0.0
Woodland (06-113-1003)	0.0	0.0	0.0	0.0	0.0	0.0

Source: Quicklook Report, August 20, 2012 (in the docket to this action).

<sup>a</sup> 40 CFR part 50, Appendix H—Interpretation of the 1-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone.

<sup>b</sup> Data shown exclude exceedances on June 23, June 27 and July 10, 2008 due to exceptional events.

<sup>c</sup> The Airport Road site was relocated to the Goldenland Court site in August 2008.

NA - Data are not available.

Two other issues in the May 18, 2011 notice were addressed separately: (1) whether, separate from determining whether the area attained the standard based on monitored air quality data, EPA could determine that such attainment was due to permanent and enforceable emissions reductions; and (2) whether EPA's proposed determinations regarding attainment and permanent and enforceable emissions reductions could support termination of the area's 1-hour ozone section 185 anti-backsliding requirements.

## II. Public Comments

EPA's proposed action provided a 30-day public comment

period. During this period, the following parties submitted comments:

1. Paul Cort, Earthjustice, submitted on behalf of Natural Resources Defense Council (NRDC); letter dated June 16, 2011.
2. Tim Shesteck, American Chemistry Council (ACC); letter dated June 17, 2011.
3. Zachary L. Craft, Baker Botts, LLP; letter dated June 17, 2011.
4. Catherine H. Reheis-Boyd, Western States Petroleum Association (WSPA); letter dated June 17, 2011.
5. Leslie Sue Ritts, The National Environmental Development Association's Clean Air Project (NEDA-CAP); letter dated June 18, 2011.

No adverse comments were directed at EPA's proposal to determine, based on complete, quality-assured air quality data, that the Sacramento Metro Area has attained the 1-hour ozone standard. Similarly, no adverse comments were directed at EPA's proposal to exclude certain monitored exceedances in 2008 as due to exceptional events.

NRDC submitted adverse comments relating to EPA's proposal to terminate 1-hour ozone section 185 requirements for the area, and set forth NRDC's contentions regarding additional criteria and legal bases for termination. No comments disputed EPA's

proposed determination that the area has attained the 1-hour ozone standard. No adverse comments address the component of EPA's notice of proposed rulemaking that is the sole subject of today's final action - EPA's determination that the area has attained the 1-hour ozone standard based on monitored air quality since 2009, including the determination to exclude certain monitored exceedances in 2008 as due to exceptional wildfire events.

As noted above, EPA intends to address in separate rulemaking the subject of NRDC's comments - EPA's proposed termination of the Sacramento Metro 1-hour ozone section 185 requirements, and criteria for termination other than monitored attainment.

EPA is acting today to finalize only that portion of the proposal that determines, based on air quality monitoring data, that the area has attained the 1-hour ozone standard, including determining that three exceedances in 2008 are excluded from consideration because they were caused by exceptional wildfire events. This notice is not intended to address, and does not finalize, any other portion of EPA's proposal related to termination of 1-hour ozone section 185 anti-backsliding requirements in the Sacramento Metro Area. As set forth above, EPA intends to address these issues in separate, future rulemaking.



### **III. EPA Action**

EPA is determining that the Sacramento Metro 1-hour ozone nonattainment area has attained the 1-hour ozone NAAQS based on complete, quality-assured, and certified ambient air quality monitoring data. Since 2009, and continuing through 2010 and 2011, complete, quality-assured and certified air quality data show continuous attainment. Preliminary data available for 2012 are consistent with continued attainment. EPA is also finalizing its determination to exclude from use, in determining the area has attained the 1-hour ozone standard, certain air quality monitoring data for 2008, because they meet the criteria for ozone exceptional events that are caused by wildfires. These air quality determinations were addressed separately and are severable from the other issues and criteria in the May 18, 2011 notice of proposed rulemaking that relate to termination of section 185 1-hour ozone requirements.

Apart from EPA's determination of attainment based on air quality,<sup>4</sup> EPA is not in this notice taking final action on any other aspects of its proposed determination to terminate the 1-hour ozone section 185 fee program requirements for the Sacramento Metro Area.

### **IV. Statutory and Executive Order Reviews**

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<sup>4</sup> This includes EPA's determination with respect to the 2008 exceedances caused by wildfire exceptional events.

This action makes a determination based on air quality data and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995

(15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register.

A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,  
Incorporation by reference, Intergovernmental relations,  
Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: October 3, 2012.

Jared Blumenfeld,  
Regional Administrator,  
Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart F - California**

2. Section 52.282 is amended by adding paragraph (f) to read as follows:

§52.282 Control strategy and regulations: Ozone.

\* \* \* \* \*

(f) Determination of attainment. EPA has determined that, as of [Insert date 30 days after the publication date], the Sacramento Metro 1-hour ozone nonattainment area has attained the 1-hour ozone standard, based upon complete, quality-assured and certified ambient air quality monitoring data for 2007-2009.